

Abuse and Neglect of Children May 2013

Laws and Rules	Sexual Harassment
Civil Liability	Suspected Abuse/Neglect Checklist
Mandated Reporting	

Laws intended to protect the children of Maine from mistreatment by adults are found in both the civil and criminal statutes and are summarized and excerpted in this section. Discussion of violence of children against children **is not** addressed in this manual.

Child and Family Services and Child Protection Act

The Child and Family Services and Child Protection Act (Title 22, sees. 4001 – 4071) establishes a process for protecting children against physical and sexual abuse by persons responsible for their care (parental figures). The Maine Department of Health and Human Services (DHHS) is given authority and responsibility to remove children from their families if there is evidence of child abuse and neglect. School personnel play a part in this effort because they are required by the law to report “reasonable suspicion” of child abuse or neglect.

Employees of schools and other institutions are required to make such reports as defined within school policy. Failure to make such reports subjects the person to prosecution and a fine.

Reports of suspected child abuse or neglect are not public records. They remain confidential; however, DHS may, in its discretion, reveal the identity of the reporter to the accused or suspected person. It is DHS policy not to identify the reporter without the reporter’s permission.

Criminal Laws

Abuse or neglect of children by “a person responsible for the child” falls within the Child and Family Services and Child Protection Act and must be reported to DHS. (Mistreatment by parents and others may also come within the criminal laws.) Suspected mistreatment of children by persons outside the family setting (i.e., “not responsible for the child”) are to be reported directly to the appropriate District Attorney’s office. When a teacher or other school employee has reason to suspect that a child is being physically or sexually mistreated by non-parental persons, reports must be made to the District Attorney for investigation and possible criminal prosecution.

School Employees Suspected of Abuse

A difficult situation arises when a school employee is suspected of abusing, molesting, or exploiting a child. It is a crime for a teacher or similar person to engage in a sexual act with a child or to assault a child (Title 17-A, sess. 254, 255). Since DHHS interprets a “person responsible for the child” to include teachers and school personnel, reports of

Abuse and Neglect of Children

May 2013

such allegations should be made to DHS. To be safe from a charge of failure to report, a similar report should also be filed with the District Attorney.

Corporal Punishment:

Since re-codification of the Maine Criminal Code in the mid-1970's, school personnel no longer have the unilateral right to use corporal punishment to discipline students. (Title 17-A, sec. 106 (2)).

A teacher or other person entrusted with the care or supervision of a person for special and limited purposes is justified in using a reasonable degree of force against any such person who creates a disturbance when and to the extent that he reasonably believes it necessary to control the disturbing behavior or to remove a person from the scene of such disturbance.

Title 20-A §4009. Civil liability

The following provisions apply to civil liability.

1. Reasonable force. A teacher or other person entrusted with the care or supervision of a person for special or limited purposes may not be held civilly liable for the use of a reasonable degree of force against the person who creates a disturbance if the teacher or other person reasonably believes it is necessary to:

- A. Control the disturbing behavior; or
- B. Remove the person from the scene of the disturbance.

2. Exceptions. Subsection 1 shall not apply to the intentional or reckless use of force that creates a substantial risk of death, serious bodily injury or extraordinary pain.

3. Effect on civil liability. This section may not be construed to increase the scope of potential civil liability of a teacher or other person entrusted with the care or supervision of a person for special or limited purposes.

4. Emergency medical treatment. Notwithstanding any other provision of any public or private and special law, any non-licensed agent or employee of a school or school administrative unit who renders first aid, emergency treatment or rescue assistance to a student during a school program may not be held liable for injuries alleged to have been sustained by that student or for the death of that student alleged to have occurred as a result of an act or omission in rendering such aid, treatment or assistance. This subsection does not apply to injuries or death caused willfully, wantonly or recklessly or by gross negligence on the part of the agent or employee.

<http://janus.state.me.us/legis/statutes/20-A/title20-Asec4009.html>

Abuse and Neglect of Children

May 2013

Sexual Harassment:

The Maine Human Rights Act prohibits “unlawful educational discrimination,” defined as unequal treatment of students by school personnel on the basis of sex. This is further defined to include, specifically, any practice of “sexual harassment:” unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of sexual nature toward a student.

Sample school policy for child abuse and neglect can be obtained by Superintendents or school board members from Maine School Management Association.

Title 22 §4002. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings:

1. Abuse or neglect. “Abuse or neglect” means a threat to a child’s health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these, by a person responsible for the child
2. Child. “Child” means any person who is less than 18 years of age
9. Person responsible for the child. “Person responsible for the child” means a person with responsibility for a child’s health or welfare, whether in the child’s home or another home or a facility which as part of its function, provides for care of the child. It includes the child’s custodian

Title 22 §4011-A. Reporting of suspected abuse or neglect

Abuse and Neglect of Children

May 2013

1. Required report to department. The following adult persons shall immediately report or cause a report to be made to DHHS when the person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected:

A. When acting in a professional capacity:

- (1) An allopathic or osteopathic physician, resident or intern;
- (2) An emergency medical services person;
- (3) A medical examiner;
- (4) A physician's assistant;
- (5) A dentist;
- (6) A dental hygienist;
- (7) A dental assistant;
- (8) A chiropractor;
- (9) A podiatrist;
- (10) A registered or licensed practical nurse;
- (11) A teacher;
- (12) A guidance counselor;
- (13) A school official;
- (14) A children's summer camp administrator or counselor;
- (15) A social worker;
- (16) A court-appointed special advocate or guardian ad litem for the child;
- (17) A homemaker;
- (18) A home health aide;
- (19) A medical or social service worker;
- (20) A psychologist;

Abuse and Neglect of Children May 2013

- (21) Child care personnel;
 - (22) A mental health professional;
 - (23) A law enforcement official;
 - (24) A state or municipal fire inspector;
 - (25) A municipal code enforcement official;
 - (26) A commercial film and photographic print processor;
 - (27) A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications; or
 - (28) A chair of a professional licensing board that has jurisdiction over mandated reporters; or
- B. Any other person who has assumed full, intermittent or occasional responsibility for the care or custody of the child, whether or not the person receives compensation.

Whenever a person is required to report in a capacity as a member of the staff of a medical or public or private institution, agency or facility, that person immediately shall notify either the person in charge of the institution, agency or facility or a designated agent who then shall cause a report to be made. The staff also may make a report directly to DHHS.

2. Required report to district attorney. When, while acting in a professional capacity, any person required to report under this section knows or has reasonable cause to suspect that a child has been abused or neglected by a person not responsible for the child, the person immediately shall report or cause a report to be made to the appropriate district attorney's office.

3. Optional report. Any person may make a report if that person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected.....

Title 22 §4012. Reporting procedures

1. Immediate report. Reports regarding abuse or neglect shall be made immediately by telephone to DHHS and shall be followed by a written report within 48 hours if requested by DHHS.

Abuse and Neglect of Children May 2013

2. Information required. The reports shall include the following information if within the knowledge of the person reporting:

- A. The name and address of the child and the persons responsible for his care or custody;
- B. The child's age and sex;
- C. The nature and extent of abuse or neglect, including a description of injuries and any explanation given for them;
- D. A description of sexual abuse or exploitation;
- E. Family composition and evidence of prior abuse or neglect of the child or his siblings;
- F. The source of the report, the person making the report, his occupation and where he can be contacted;
- G. The actions taken by the reporting source, including a description of photographs or x rays taken; and
- H. Any other information that the person making the report believes may be helpful.

<http://janus.state.me.us/legis/statutes/22/title22sec4012.html>

Title 22 §4013. Mandatory reporting to medical examiner for postmortem investigation

A person required to report cases of known or suspected abuse or neglect, who knows or has reasonable cause to suspect that a child has died as a result of abuse or neglect, shall report that fact to the appropriate authority as provided in section 3026. A child shall not be considered to be abused or neglected solely because he was provided with treatment by spiritual means by an accredited practitioner of a recognized religious organization. <http://janus.state.me.us/legis/statutes/22/title22sec4013.html>

Title 22 §4014. Immunity from liability

1. Reporting and proceedings. A person, including an agent of the department, participating in good faith in reporting under this subchapter or participating in a related child protection investigation or proceeding, including, but not limited to, a multidisciplinary team, out-of-home abuse investigating team or other investigating or treatment team, is immune from any criminal or civil liability for the act of reporting or

Abuse and Neglect of Children May 2013

participating in the investigation or proceeding. Good faith does not include instances when a false report is made and the person knows the report is false. Nothing in this section may be construed to bar criminal or civil action regarding perjury or regarding the abuse or neglect which led to a report, investigation or proceeding.

2. Photographs and x-rays. A person participating in good faith in taking photographs or x-rays under this subchapter is immune from civil liability for invasion of privacy that might otherwise result from these actions.

3. Presumption of good faith. In a proceeding regarding immunity from liability, there shall be a rebuttable presumption of good faith.

<http://janus.state.me.us/legis/statutes/22/title22sec4014.html>

Title 22 §4016. Confidentiality of employee records

Notwithstanding Title 5, section 554, subsection 2, paragraph E or any other provision of law, the confidentiality of employee records is abrogated in relation to required reporting, cooperating with the department or guardian ad litem in an investigation or other child protective activity or giving evidence in a child protective proceeding.

<http://janus.state.me.us/legis/statutes/22/title22sec4016.html>

Title 22 §4017. Discrimination

No person may be discriminated against by any employer in any way for participating in good faith in reporting under this subchapter or in a related child protection investigation or proceeding.

<http://janus.state.me.us/legis/statutes/22/title22sec4017.html>

Abuse and Neglect of Children

May 2013

Abuse Checklist of Physical and Behavioral Indicators of Child Abuse and Neglect

Physical Indicators

- ☐ unexplained bruises and welts
- ☐ on face, lips, mouth
- ☐ in various stages of healing
- ☐ clustered, forming rectangular patterns, reflecting shape of article used to inflict (electric cord, belt buckle)
- ☐ on several different surface areas
- ☐ regularly appear after absence, weekend of vacation
- ☐ unexplained burns
- ☐ cigar, cigarette burns, especially on soles, palms, back or buttocks
- ☐ immersion burns (sock-like, glove-like, doughnut shaped on buttocks or genitalia)
- ☐ patterns like electric burner, iron, etc.
- ☐ rope burns on arms, legs, neck or torso
- ☐ infected burns, indicating delay in seeking treatment
- ☐ abdominal distention
- ☐ bald patches on the scalp

☐ other

Behavioral Indicators

PHYSICAL ABUSE

- ☐ feels deserving of punishment
- ☐ wary of adult contact
- ☐ behavioral extremes
- ☐ aggressiveness or withdrawal
- ☐ frightened of parents; afraid to go home
- ☐ reports injury by parents
- ☐ vacant or frozen stare
- ☐ lies very still while surveying surroundings (infant)
- ☐ responds to questions in monosyllables
- ☐ inappropriate or precocious maturity
- ☐ manipulative behavior to get attention
- ☐ capable of only superficial relationships
- ☐ alcohol or drug abuse
- ☐ talks in a whisper or whine

SEXUAL ABUSE

- ☐ delinquency (e.g, thefts)
- ☐ states there is no caretaker
- ☐ outbursts of rage
- ☐ other _____

EMOTIONAL MALTREATMENT

- ☐ unwilling to change for gym or participate in physical education class

Abuse and Neglect of Children

May 2013

- | | |
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| <input type="checkbox"/> torn, stained, or bloody underclothing | <input type="checkbox"/> withdrawal, fantasy, or infantile behavior |
| <input type="checkbox"/> pain, swelling, or itching in the genital area | <input type="checkbox"/> poor peer relationships |
| <input type="checkbox"/> bruises, bleeding or lacerations in external genitalia, vaginal, or anal areas | <input type="checkbox"/> delinquent or runaway |
| <input type="checkbox"/> vaginal/penile discharge | <input type="checkbox"/> reports sexual assault by caretaker |
| <input type="checkbox"/> venereal disease especially in pre-teens | <input type="checkbox"/> change in performance in school |
| <input type="checkbox"/> poor sphincter tone | <input type="checkbox"/> other _____ |
| <input type="checkbox"/> pregnancy | |
| <input type="checkbox"/> other _____ | |
|
 | |
| <input type="checkbox"/> speech disorders | <input type="checkbox"/> habit disorders |
| <input type="checkbox"/> lags in physical development | <input type="checkbox"/> sucking |
| <input type="checkbox"/> failure to thrive | <input type="checkbox"/> biting |
| <input type="checkbox"/> hyperactive/disruptive behavior | <input type="checkbox"/> rocking |
| <input type="checkbox"/> shallow, empty facial appearance | <input type="checkbox"/> conduct/learning disorder |
| | <input type="checkbox"/> antisocial behavior |
| | <input type="checkbox"/> destructive |
| | <input type="checkbox"/> neurotic traits |
| | <input type="checkbox"/> sleep disorders |
| | <input type="checkbox"/> inhibition of play |
| | <input type="checkbox"/> unusual fearfulness |
| | <input type="checkbox"/> behavioral extremes |
| | <input type="checkbox"/> child does not change expression |
| | <input type="checkbox"/> compliant, passive |
| | <input type="checkbox"/> aggressive, demanding |
| | <input type="checkbox"/> overly adaptive behavior |
| | <input type="checkbox"/> inappropriately adult |
| | <input type="checkbox"/> developmental lags |
| | <input type="checkbox"/> emotionally volatile |
| | <input type="checkbox"/> attempted suicide |

Indicators are not proof that abuse or neglect actually exists. Rather, they are indications that a child may have a problem and that further exploration may be necessary to determine what is happening in that child's life. Abuse and/or neglect are not the only causes of these specific behaviors or indicators.